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Supreme Court, U.S.
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No. 97-1348

In The

Supreme Court of the United States

October Term, 1997

MARY JANE WILSON,

Petitioner,

v.

THOMAS DAVID MARCHINGTON;
INLAND EMPIRE SHOWS, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

(1) Should a writ of certiorari issue where the Court of Appeals below construed federal statutes consistent with prior rulings by this Court?

(2) Should a writ of certiorari issue where the Court of Appeals applied a recent ruling by this Court to a virtually identical set of facts in dispute?

(3) Should a writ of certiorari issue where the petitioner is requesting this Court to resolve factual disputes already decided by the federal and tribal courts below?

(4) Should a writ of certiorari issue where the decision of the Court of Appeals below is consistent with prior decisions of this Court, other Courts of Appeal, and the high court of at least one state, as well as its own precedent?

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit, entered September 23, 1997, is reported at 127 F.3d 805 (9th Cir. 1997), and can be found in the Appendix to Petitioner's Brief, pp. App. 1 through App. 25 [hereinafter Petitioner's App., at ___.]

JURISDICTION

Respondents agree with the jurisdictional statements set forth on page 1 of the Petitioner's brief.

STATUTES INVOLVED

The statutes listed below can be found in the appendix to Respondents' brief:

25 U.S.C. § 311

38 Stat. 1188

Any other statutes referenced herein are included in the Petitioner's Appendix.

STATEMENT OF THE CASE

Respondents take exception to certain portions of Petitioner's statement of the case as set forth on pages 2 and 3 of her petition, as follows:

At page 3, Petitioner alleges that Respondent Marchington "crossed a double yellow line attempting to

pass [Wilson], causing a collision which resulted in significant injuries to [her.]" The question of whether Respondent Marchington actually crossed a double yellow line, thereby implying that he violated some law, is disputed. Respondents also dispute whether Petitioner actually suffered "significant injuries" as a result of the aforementioned accident.

Other than this exception, the statement of the case as set forth is essentially correct. Any factual disputes between the parties are inconsequential to the resolution of Petitioner's request for certiorari.

Petitioner's description of proceedings in the tribal courts and in the federal district and appellate courts is set forth accurately.

REASONS FOR DENYING THE WRIT

Rule 10 of the Rules of this Court provides in pertinent part:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling or fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state

> court of last resort; or has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of this court's supervisory power;
>
> . . . .
>
> c) . . . a United States court of appeals has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

None of these prerequisites are satisfied by Petitioner. Her principal concern appears to be that the United States Court of Appeals has decided an important question of federal law in a manner conflicting with other rulings of this Court. This argument is without merit. Not only is the decision of the Court of Appeals below entirely consistent with previous rulings of this Court, but the decision in no way raises any issues of significant consequence that have not already been decided by this Court, or which compel any direct exercise of this Court's supervisory power.

A. The issue with respect to "alienation of land."

Petitioner's principal argument is that the Court of Appeals either based its decision on an erroneous construction of a specific treaty, or at least did not give the

Blackfeet Tribal Court the opportunity to make initial determinations as to the meaning and consequence of that treaty. Petitioner's Brief, at 5-10.

Petitioner's argument is without merit. It ignores the basis of the Court of Appeals' holding below. That holding is consistent not only with federal statute, but with prior opinions of this Court on related subjects. Petitioner's argument assumes that the decision of the Court of Appeals below was based almost exclusively on an interpretation of the Treaty of 1855 between the United States and the Blackfeet Nation. This argument misrepresents the holding of the Court of Appeals. The court's decision is based primarily not upon construction of a treaty, but on construction of a federal statute, in light of a comparable construction given of a comparable statute by this Court in *Strate v. A-1 Contractors*, ___ U.S. ___, 117 S.Ct. 1404 (1997).

The Court of Appeals below was called upon to construe 25 U.S.C. § 311, under which the Secretary of the Interior is authorized:

> [t]o grant permission . . . to the proper state or local authorities for the opening or establishment of public highways in accordance with the laws of the state or territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indians under laws or treaties but which have not been conveyed to the allotees with full power of alienation.

See also Act of March 4, 1915, chapter 161, section 2, 38 Stat. 1188 ("that the legal authorities charged with the

duty of laying out and opening public roads and highways under the laws of the state of Montana, having jurisdiction over any territory embraced with any Indian reservation in Montana are hereby authorized and empowered to layout and open public roads within any of the said reservations . . . ").[1]

This Court has held that a road opened and established pursuant to 25 U.S.C. § 311 is governed by state law. See *United States v. Oklahoma Gas and Electric Company*, 318 U.S. 206, 63 S.Ct. 534 (1943). There, the United States brought a declaratory judgment action against the Oklahoma Gas and Electric Company on grounds that the company was illegally occupying certain Indian lands within its pole line. This Court held that the appropriate interpretation of 25 U.S.C. § 311 was that the scope of use to which a highway opened up under the Act could be put was to be determined by state law in the absence of any governing administrative ruling, statute, or dominating consideration of Congressional policy to the contrary. 318 U.S. at 209, 63 S.Ct. at 535. State law controls not because of the power of the state, but because of the Congressional adoption of state law as the measure of the federal grant. "These considerations, as well as the explicit reference in the act of state law in the matter of 'establishment' as well as of 'opening' the highway, indicate that the question in this case is to be answered by reference to that law . . . " 318 U.S. at 210, 63 S.Ct. at 536.

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[1] The Court of Appeals discussion can be found at 127 F.3d at 813-815; see also Petitioner's App. at 19-22.

In accordance with that holding, where the state of Oklahoma had been given permission to establish a highway, the state, acting pursuant to state law, was authorized to grant an electric company a license permitting the company to occupy a portion of the highway across the allotted lands with a rural electric service line. The United States, acting in its role as trustee for the Indian lands, could not restrict that access.

This Court's holding has formed the basis of decisions within Montana with respect to the scope of such an easement, and the power of tribes to interfere with that easement. In *United States v. Mountain States Telephone and Telegraph Company*, 434 F.Supp. 625 (D.Mont.1977), then-Chief United States District Judge Russell Smith held that this Court's decision in *Oklahoma Gas* formed a sufficient basis under which the law of Montana controlled the right of a telephone company to establish a buried telephone line cable on the right-of-way of a United States Highway crossing the Flathead Indian Reservation, without the approval of the Secretary of the Interior or the Tribal Government. 434 F.Supp. 626-628.

The Court of Appeal's decision below with reference to these federal statutes tracks this Court's analysis of comparable statutes in *Strate*. In *Strate*, this Court held that the state of North Dakota acquired a right-of-way for a state highway in accordance with 25 U.S.C. §§ 323-328[2], statutes comparable to 25 U.S.C. § 311. See *Strate*, 117 S.Ct. at 1413-1414. With one exception, the right-of-way

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[2] The text of 25 U.S.C. §§ 323-328 is set forth in Petitioner's Appendix at App. 27 through 29.

acquired by North Dakota essentially rendered that stretch of highway alienated non-Indian land; the tribe involved in that case did not reserve any right to exercise dominion or control over the right-of-way. 117 S.Ct. at 1414. Consequently, in accordance with the rule announced in *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245 (1981), this Court held that when an automobile accident occurred on a portion of the public highway maintained over that right-of-way, tribal courts could not entertain a civil action against an allegedly negligent driver or the driver's employer, neither of whom was a member of the tribe. *Strate*, 117 S.Ct. at 1414-1416.

As with the right-of-way involved in *Strate*, U.S. Highway 2 – the highway involved in the instant case – was found by the Court of Appeals below to be "similar in all relevant respects to the highway in Strate." 127 F.3d at 813; Petitioner's App. at 19. The road is located on an easement granted to the state under 25 U.S.C. § 311. As a highway constructed under a right-of-way granted under a federal statute, the factual scenario is to that extent identical to that involved in *Strate*.

The Court of Appeals' reference to the Blackfeet Indian Treaty was secondary to its conclusion that the right-of-way over which U.S. Highway 2 was constructed was properly conferred, and that the Blackfeet Tribe could not restrict access over that highway. 127 F.3d at 814; Petitioner's App. at 20-21. The language of the treaty is plain to the effect that the tribe long ago consented to the construction of public roads through tribal lands. Whether (1) consistent with the consent, or (2) consistent with Congress' plenary powers in such matters, the State

of Montana received a right-of-way over which U.S. Highway 2 was constructed, and that right-of-way is no different than the one discussed in *Strate* as having been granted to the State of North Dakota.

Petitioner's arguments with respect to the treaty do not outweigh considerations imposed either by federal statute or prior rulings of this Court. The obvious implication behind Petitioner's argument is that if her interpretation of the treaty is correct, then the Blackfeet Tribe would have a right to restrict access over U.S. Highway 2. But at no time has the Blackfeet Tribe ever attempted to assert such control. Indeed, in the proceedings below, not even Petitioner's counsel asserted that the Tribe somehow had rights to restrict rights over U.S. Highway 2. 127 F.3d at 814; Petitioner's App. at 21. Any suggestion now by Petitioner to the contrary would constitute an attempt to introduce new or changed arguments and evidence on matters that have already been concluded both by the Court of Appeals and the District Court below.

The decision of the Court of Appeals below is consistent with the long-established rule of this Court that Indian title is only a "right of occupancy . . . extinguishable only by the United States." *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 667, 94 S.Ct. 772, 777 (1974). At least one federal district court within the Ninth Circuit has held that rights-of-way established for United States highways are "just such a clear expression of Congressional intent to extinguish Indian title in rights-of-way . . . " *Swift Transportation, Inc. v. John*, 546 F.Supp. 1185, 1192 (D. Ariz. 1982) (right-of-way for U.S. Highway 89 established pursuant to 25 U.S.C. §§ 323-328; where

statutory prerequisites for right-of-way satisfied, the status of the highway is equivalent to that of non-Indian fee land, as concluded in *Montana v. United States*).

The statute authorizing the opening of lands which eventually became U.S. Highway 2 do not carry with them rights of compensation or consent requirements; these prerequisites are usually found in more recent federal legislation setting forth the requirements for obtaining rights-of-way. Nevertheless, the absence of such provisions does not change the basic principle that Congressional action can operate to extinguish Indian title, and that in any event, the Blackfeet Tribe in fact gave its consent in 1855.

In summary, Petitioner's argument with respect to "alienation of land" is without merit. The holding of the United States Court of Appeals below is entirely consistent with previous decisions of this Court and the mandates of federal statute.

B. The status of the Plaintiff in this action is irrelevant.

Petitioner's second basis for seeking certiorari is the assertion that where a tribal member plaintiff is involved, as in the instant case, the considerations set forth in *Strate* do not apply. Petitioner's Brief, at 10-12. Petitioner misreads this Court's holding.

Strate involved a claim by a non-Indian plaintiff against a non-Indian defendant. Yet this fact is of no consequence to this Court's jurisdictional analysis; *Strate* is very clear that the status of the *plaintiff* is irrelevant in

deciding whether the *tribal court* has jurisdiction in civil proceedings; rather, it is the status of the *defendant* vis-a-vis the tribe's authority that is critical:

> This case concerns the adjudicatory authority of tribal courts over personal injury actions against defendants who are not tribal members. Specifically, we confront this question: When an accident occurs on a portion of a public highway maintained by the State under a federally granted right-of-way over Indian reservation land, may tribal courts entertain a civil action against an allegedly negligent driver and the driver's employer, neither of whom is a member of the tribe?
>
> 117 S.Ct. at 1406.

At no point in *Strate* does this Court ever state, suggest or imply that the holding turns on the status of the plaintiff. If that were true, then the Court's decision would make no sense. As *Strate* makes clear, the starting point for jurisdictional analysis is this Court's prior ruling in *Montana v. United States*. According to that decision, civil jurisdiction of a tribal entity does not extend to the activities of non-members of the tribe, absent a grant of such authority by Congress. The only exceptions to that rule are that a tribe retains authority to regulate the activities of nonmembers who enter consensual relationships with the tribe or its members (commonly referred to as the first *Montana* exception); and a tribe may also have authority over the conduct of non-Indians when that conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe," the so-called second *Montana* exception. See *Montana*, 450 U.S. at 565-566, 101 S.Ct. at 1258-1259,

cited in Strate, 117 S.Ct. at 1409. The *Montana* analysis is not driven by the status of the plaintiff or complainant in civil proceedings.

Here, as before the Court of Appeals below, Petitioner took the position that *Strate* either did not apply due to Petitioner's status as a tribal member, or if it did, the second *Montana* exception applied in such a way as to confer jurisdiction in the tribal court. But the Court of Appeals below rejected such an argument, citing *this* Court's own statements in *Strate:*

> Wilson . . . claim[s] that a traffic accident injuring a tribal member sufficiently affects the economic security, political integrity, or health and welfare of the tribe, thus satisfying the second Montana exception. However, in Strate, this notion was rejected by Justice Ginzberg, speaking for the Court, who observed that:
>
> > Undoubtedly, those who drive carelessly on a public highway running through a reservation endanger all in the vicinity, and surely jeopardize the safety of tribal members. But if Montana's second exception requires no more, the exception would severely shrink the rule.
>
> [*Strate*, 117 S.Ct. at 1415]. If the possibility of injuring multiple tribal members does not satisfy the second Montana exception, then, perforce, Wilson's status as a tribal member alone cannot.
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> 127 F.3d at 814-815; Petitioner's App. at 22-23.

This is the only holding consistent with both *Montana* and *Strate*. Petitioner's claims to the contrary are without merit.[3]

C. "Value of a remand to the Tribal Court."

Petitioner also suggests that certiorari is important, because the "Tribal Court has not had the opportunity to consider the jurisdictional issues raised by this Court in *Strate*." Petitioner's Brief, at 12.

This argument is simply a means by which Petitioner proposes to re-litigate factual issues already resolved by the tribal or federal courts below. Petitioner alleges that there really was no right-of-way along U.S. Highway 2, or at least, there was no proceeding to determine the existence of the right-of-way. This argument is without merit. Not only is the fact of the right-of-way clearly established, but Petitioner failed to even argue this point on the initial appeal. Moreover, the determination of the existence of a right-of-way is a question of law, and since

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[3] Petitioner cites this Court to a contrary interpretation rendered by United States District Judge Don Molloy, see Petitioner's Brief, at 11-12 [citing decision in *State of Montana v. Bremner*, Opinion and Order, CV 97-59-GF-DWM (D. Mont. July 31, 1997), now reported at 971 F.Supp. 436]. This decision, handed down nearly two months before the decision of the Court of Appeals below, is inconsistent with the opinion of the Court of Appeals, and is therefore of no force and effect. Furthermore, Judge Molloy's views are not persuasive, as they are entirely inconsistent with *Montana v. United States*, as construed by this Court in *Strate*. Judge Molloy's analysis makes the same fatal assumptions argued by Petitioner in her brief.

the questions ultimately raised in this case are the interpretations of federal statutes, the value of a remand to Tribal Court is irrelevant.

Likewise, evidentiary disputes as to the "point of collision" were also resolved in the federal district court below, as noted by the Court of Appeals:

> The question of whether the accident occurred on, or just off, Highway 2, is disputed by the parties. The district court, however, determined that the accident occurred on Highway 2, and we review this finding only for clear error. [citation omitted] There are facts in the record which support the district court's conclusion. The accident occurred while Marchington was trying to pass Wilson. . . . Wilson argues the impact may have occurred just off Highway 2 because [Marchington] was trying to avoid Wilson by driving on the left. However, both parties agreed that the State of Montana's right-of-way did not end at the pavement and could have extended up to fifty feet from the center line. . . . [T]he description of the accident by the Blackfeet Supreme Court would seem to support the inference that the accident occurred on Highway 2. [footnote citation omitted] Given these facts, there was no clear error in the district court's determination.
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> 127 F.3d at 814; Petitioner's App. at 21-22.

Certiorari is clearly inappropriate. Rule 10, Sup. Ct. R.

D. Other considerations

In a footnote to the concluding section of her brief, Petitioner cites this Court to numerous cases, asserting

that the Court of Appeals decision below is contrary to all or most of these decisions. Petitioner's Brief, at 15 n.1. The proposition is stated only as a conclusion, without any attempt to explain the reasons why the decision of the Court of Appeals is inconsistent with prior case law. Respondents therefore are reluctant to address Petitioner's conclusory argument in any detail. However, there is an incidental benefit to reviewing the prior case law, because such a review actually serves to support Respondents' position that the decision of the Court of Appeals below is not out of keeping with the language and tenor of those decisions.

Two of the cases cited in the footnote, *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1987) and *National Farmers Union Insurance Company v. Crow Tribe of Indians*, 471 U.S. 845 (1985), are decisions of this Court. The holdings in these cases are not inconsistent with the holding of the Court of Appeals below. As noted by this Court in *Strate*:

> National Farmers Union and Iowa Mutual enunciate only an exhaustion requirement, a 'prudential rule,' see Iowa Mutual, 480 U.S., at 20, n.14, 107 S.Ct. at 978, n.14, based on comity, see id., at 16, n.8, 107 S.Ct., at 976, n.8. These decisions do not expand or stand apart from Montana [v. United States] instruction on the 'inherent sovereign powers of an Indian tribe.' 450 U.S. at 565, 101 S.Ct. at 1258.
>
> 117 S.Ct. at 1413.

Thus, any assertion by Petitioner that these decisions actually confer jurisdiction upon tribal courts is directly contrary to the holding of this Court. Likewise, any and

all decisions by the Court of Appeals below which Petitioner believes confer jurisdiction on tribal courts do not so hold to the extent these decisions were decided in the wake of *National Farmers Union*, *Iowa Mutual*, or both, and merely reiterate this Court's determination that parties should first exhaust all their remedies in tribal courts before bringing request for relief to the federal courts.[4]

The balance of the decisions cited by Petitioner in her footnote fall into one of three additional categories, none of which have any bearing on the instant case: (1) disputes involving non-Indians who arguably entered into consensual commercial relationships with tribes or tribal members, thus potentially bringing the non-Indians within the first exception to the *Montana* rule, and thereby suggesting that tribal courts indeed had jurisdiction[5]; (2) disputes involving non-Indians where their

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[4] Decisions cited by Petitioner which merely recite the "exhaustion requirement" are as follows: *Crawford v. Genuine Parts*, 947 F.2d 1405 (9th Cir. 1991); *Burlington Northern Railroad Co. v. Crow Tribal Council*, 940 F.2d 1239 (9th Cir. 1991); *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221 (9th Cir. 1987); *Wellman v. Chevron U.S.A., Inc.*, 815 F.2d 577 (9th Cir. 1987); and *A & A Concrete, Inc. v. White Mountain Apache Tribe*, 781 F.2d 1411 (9th Cir. 1986).

[5] Decisions cited by Petitioner involving the prospect of tribal jurisdiction due to the existence of consensual commercial relationships are as follows: *United States ex rel. Morongo Band of Mission Indians v. Rose*, 34 F.3d 901 (1994) (enforcement of tribal gambling regulations); *White Mountain Apache Tribe v. Smith Plumbing Company, Inc.*, 856 F.2d 1301 (9th Cir. 1988) (injunction against subcontractor trying to enforce performance bond); and *R.J. Williams Company v. Fort Belknap Housing Authority*, 719 F.2d 979 (1983) (dispute involving construction contract with tribal housing authority).

activities bear directly on the "political integrity, the economic security, or the health and welfare of the tribe", the second *Montana* exception[6]; or (3) unique factual and/or legal scenarios vastly different than those involved in the instant case, such that the considerations involved in these cases case do not even arise in, or are irrelevant to, the instant appeal.[7]

The decision of the Court of Appeals below is both consistent with its prior holdings as well as the holdings of this Court. Nothing stated in the decision below constitutes a departure from the essential principles governing tribal court jurisdiction.[8] To the extent that Petitioner

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[6] The case cited by Petitioner in that regard is *Babbit Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587 (9th Cir. 1983) (dispute involving enforcement of tribal regulations on repossession of property; discussion of unique tribal interests affected by failure to allow tribal courts to enforce such regulations).

[7] In *United States v. Plain Bull*, 957 F.2d 724 (9th Cir. 1992), the Court of Appeals affirmed a district court decision dismissing an action brought by the United States against a tribal member to recover penalties for grazing cattle on tribal lands without a permit on grounds of comity; the Court of Appeals held that the federal courts should decline to exercise jurisdiction over transactions involving tribal members within the boundaries of their reservation. 975 F.2d at 725-727. In *Sanders v. Robinson*, 864 F.2d 630 (9th Cir. 1988), the Court of Appeals affirmed a district court decision holding that a tribal court had properly exercised jurisdiction over a non-Indian husband in a tribal court divorce proceeding, where the Court of Appeals agreed that jurisdiction in this divorce proceeding was concurrent between the tribe and the nearby state district court. 864 F.2d at 632-633.

[8] Petitioner also implies that the Court of Appeals below erred in overruling a prior decision by that Court, *Hinshaw v. Mahler*, 42 F.3d 1178 (9th Cir. 1994). It is the prerogative of a

argues any inconsistency between the Court of Appeals' holding and that of other courts, it should be emphasized that the holding is consistent with the only other known decisions involving similar facts. See *Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087 (8th Cir. 1997); *A-1 Contractors v. Strate*, 76 F.3d 930 (8th Cir. 1996), *aff'd*, ___U.S. ___, 117 S.Ct. 1404 (1997); *Red Fox v. Hettich*, 494 N.W.2d 638 (S. Dak. 1994).

CONCLUSION

For all the reasons set forth above, a Writ of Certiorari is unnecessary in this case. The decision of the Court of Appeals below is consistent with this Court's holding in *Strate*. It is also consistent with federal statutes respecting alienation and rights-of-way over Indian land, and decisions by this Court construing those statutes. The decision of the Court of Appeals below was simply an application of unquestioned precedent to a fact scenario virtually identical to that involved in *Strate*. Furthermore, the decision is consistent with the holdings of other circuit courts or the highest court of a state adjudicating comparable disputes. Respondents therefore respectfully

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Court of Appeals to overrule its prior decisions if compelled to do so by a subsequent and contrary decision by this Court, or by such changes in circumstances as the majority of the Court of Appeals deems sufficient to justify a reversal of its previous holding. Here, the Court of Appeals concluded that this Court's decision in *Strate* "effectively overruled [*Hinshaw*] . . . for its general propositions concerning tribal jurisdiction and is no longer viable law on those issues." 127 F.3d at 815; Petitioner's App. at 24.

request that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

25 U.S.C.A. § 311. Opening Highways

The Secretary of the Interior is authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper State or local authorities for the opening or establishment of public highways in accordance with the laws of the State or Territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indians under laws or treaties but which have not been conveyed to the allottee with full power of alienation.

* * *

Act of March 4, 1915, ch. 161, § 2, 38 Stat. 1188

That the legal authorities charged with the duty of laying out and opening public roads and highways under the laws of the state of Montana, having jurisdiction over any territory embraced with any Indian reservation in Montana, are hereby authorized and empowered to lay out and open public roads within any of the said Indian reservations in conformity to and in accordance with the laws of the State of Montana relating to the laying out and opening of public roads, and that any public road when so laid out and opened shall be deemed a legal road: *Provided*, that such road authorities shall, in addition to notifying the landowners as provided in the State laws, likewise serve notice upon the superintendent in charge of the restricted Indian lands upon which it is proposed to lay out a public road, and shall also furnish

him with a map drawn on tracing linen showing the definite location and width of such proposed road, and no such road shall be laid out until after it has received the approval of such superintendent.